



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 2303-99
24 March 2000

CAPT [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear Captain [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

You requested that the reviewing officer's comments be removed from your fitness reports for 15 June 1996 to 31 January 1997, 1 February to 30 May 1997 and 31 May to 30 November 1997; and that your fitness report for 2 December 1997 to 3 March 1998 be removed completely. You also requested that your failures by the Fiscal Year (FY) 1999 and 2000 Captain Selection Boards be removed, that you be afforded consideration by a special selection board, and that action to effect your involuntary discharge from the Regular Marine Corps be set aside.

It is noted that the Commandant of the Marine Corps has directed removal of the reviewing officer's comments from your fitness reports for 1 February to 30 May 1997 and 31 May to 30 November 1997. In addition, you have been promoted to captain pursuant to selection by a special selection board; your failures by the FY 1999 and 2000 Captain Selection Boards have been removed administratively; and action to effect your involuntary discharge from the Regular Marine Corps has been set aside.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 23 March 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. The Board also considered the reports of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 5 April and 30 August 1999, copies of which are attached. Finally, they considered your letter dated 10 May 1999, your Department of Defense (DD) Form 149 dated 24 May 1999 with enclosures, and your letter dated 6 June 1999.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found no error or injustice warranting removal of the reviewing officer's comments on your fitness report for 15 June 1996 to 31 January 1997 or complete removal of your report for 2 December 1997 to 3 March 1998. In this connection, they substantially concurred with the comments contained in the reports of the PERB.

Specifically regarding the reviewing officer's comments on your report for 15 June 1996 to 31 January 1997, the Board was unable to find that the reviewing officer lacked sufficient observation of your performance to make the comments provided. In this regard, they noted that observation need not be direct.

Specifically concerning your report for 2 December 1997 to 3 March 1998, the Board was unable to find that you were not fairly ranked below the other two first lieutenants you assert to have had more "'face-time'" with the reporting senior.

In view of the above, your application for relief beyond that already effected has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures

2303-99



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
1610
MMER/PERB
5 APR 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF FIRST
LIEUTENANT [REDACTED] USMC

Ref: (a) 1stLt [REDACTED] DD Form 149 of 20 Jan 99
(b) MCO P1610.7D w/Ch 1
(c) MCO P1610.7D w/Ch 1-2
(d) MCO P1610.7D w/Ch 1-4

Encl: (1) CMC Advisory Opinion 1600 MMOA-4 of 29 Mar 99

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 25 March 1999 to consider First Lieutenant [REDACTED]'s petition contained in reference (a). Removal of the Reviewing Officer's comments appended to the following fitness reports was requested:

- a. Report A - 960615 to 970131 (SA) -- Reference (b) applies
- b. Report B - 970201 to 970530 (GC) -- Reference (c) applies
- c. Report C - 970531 to 971130 (TR) -- Reference (d) applies
- d. Report D - 971202 to 980303 (TD) -- Reference (d) applies

2. The petitioner contends the Reviewing Officer's remarks on the challenged reports are adverse, yet he was not given an opportunity to acknowledge and comment. With specific regard to Report C, the petitioner states that the Reviewing Officer did not have sufficient opportunity to observe his performance due to separation during the entire reporting period.

3. In its proceedings, the PERB concluded that:

a. Report A is both administratively correct and procedurally complete as written and filed. Contrary to the petitioner's arguments and beliefs, there is absolutely nothing in the Reviewing Officer's remarks that can be construed as "adverse" or the least bit unflattering.

b. The removal of the Reviewing Officer's comments appended to Reports B and C is warranted and has been directed.

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c. On Report D, the Reviewing Officer marked the second block indicating he had only limited observation, but generally concurred in the Reporting Senior's marks in Items 15a and 15b. He also omitted any narrative remarks. Hence, there is nothing on which to comment.

4. The Board's opinion, based on deliberation and secret ballot vote, is that Reports A and D should remain as configured.

5. The enclosure is furnished to assist in resolving the petitioner's request for the removal of his failure of selection to the grade of Captain.

6. The case is forwarded for final action.

[REDACTED]
[REDACTED]
Colonel, U.S. Marine Corps
Deputy Director
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps

2303-99



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
1610
MMER/PERB
AUG 30 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF FIRST
LIEUTENANT [REDACTED], USMC

Ref: (a) 1stLt. [REDACTED] DD Form 149 of 24 May 99
(b) MCO P1610.7D w/Ch 1-4

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 24 August 1999 to again consider First Lieutenant [REDACTED]'s challenges to his fitness report for the period 971202 to 980303 (TD). Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner argues that both reporting officials had limited observation of his performance, owing to several periods on non-availability. He also points out that while not technically adverse, the evaluation reflects negatively on his record and the noted minimal observation time decreases the value of the report.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. Regardless of the petitioner's cumulative period of non-availability during the stated timeframe, the Reporting Senior was within his rightful prerogative in rendering an observed evaluation. The Board opines that the information included in the fitness report was of significance and should have been reported (i.e., deployment as OIC of a 42-man aggressor force; maintenance of 100% accountability of all personnel and equipment; completion of II MEF HRST Master Course (top of his class)).

b. The petitioner is correct that the report is not technically adverse. Whether it negatively impacts on his overall competitiveness is speculation and has no grounding in fact. With this in mind, the Board emphasizes its position that noncompetitive and adverse are not synonymous and that administratively correct and factually accurate fitness reports should not be eliminated simply to enhance career progression.

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To do so would breach the integrity and viability of the entire performance evaluation system.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of First Lieutenant [REDACTED] official military record.

5. The case is forwarded for final action.

[REDACTED]
Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps